IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8038 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTIBHAI KASHIRAM PATEL

Versus

STATE OF GUJARAT, THROUGH SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 8038 of 2000

MR PK JANI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-4

..... for Respondent No. 5

MR PJ VYAS for Respondent No. 5/1-7

DS AFF.NOT FILED (R) for Respondent No. 5/1,5/2,5/3,6,7

RULE NOT RECD BACK for Respondent No. 5/1,5/2,6,7

NOTICE SERVED BY DS for Respondent No. 5/3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 26/04/2002

ORAL JUDGEMENT

With the consent of parties matter is taken up for final hearing. The present petition is preferred by the petitioner against the order dated 21.3.2000 passed by the Deputy Director (appeals) on behalf of the State Govt whereby the revision was partly allowed. However, while deciding the revision application direction is given to inquire as to whether the persons concerned were agriculturists/agricultural labourers or not.

2. Heard Mr.Unawla appearing for Mr.P.K.Jani for the petitioner and Mr.Kothak for respondent Nos 1,2,3 & 4 and Mr.Vyas for private respondents, i.e. respondent Nos 5 and 6.

3. Having heard both sides, there is conscience arrived at between the parties that the issue is covered by the judgment of this court (Coram: B.C.Patel & Jayant Patel,JJ) as per the decision dated 20-21/2/2002 in LPA Nos 1038 & 1039/01 in SCA Nos 2725 & 2723/01 on the point that while exercising powers under Bombay Land Revenue Code, the authorities could not have ordered for holding inquiry under the provisions of other Act. In the aforesaid judgment the Division Bench considering the contentions ultimately observed as under:

> "Therefore, in our opinion,while examining the matter under Bombay Land Revenue Code, it would not be open issue directions under other statute, namely, Tenancy Act. It could have been stated that the authority concerned may take appropriate action under the provisions of the Tenancy Act if it satisfied then the matter would have been altogether different. We leave the matter to the appropriate authority to decide the same in accordance with law."

4. Keeping in view the aforesaid observations made by the Division Bench it transpires that in the present case while deciding the revision application direction is given for holding inquiry as to whether Gokalbhai Jakshibhai Rabari and his brothers are, in fact, agriculturists or agricultural labourers. The said direction is given keeping in view the provisions of the Tenancy Act because the contention which is examined by the authorities is that if the persons concerned are not agriculturists or agricultural labourers the land should not have been transferred on their name and the entry

should not have been mutated. Therefore, when the State Govt has issued directions it might prejudice the case of the petitioner before the authority who makes inquiry regarding the status of the petitioners as to whether they were agriculturists or not. Therefore this direction is required to be construed in the manner that it is not to be be treated as a mandatory direction but it will be to the extent that it will be open to the authority concerned to inquire regarding the status of the petitioners as to whether they were agriculturists or agricultural labourers at the relevant point of time. Except this no further observations are required to be made and the matter is left to the authority to decide the same in accordance with law.

5. In view of the aforesaid, this petition stands allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

26.4.2002 (JAYANT PATEL,J)